

**CITY OF MILPITAS  
Summary of Contents  
Milpitas City Council Meeting  
December 16, 2003  
6:00 p.m. Closed Session  
7:00 p.m. Public Business  
455 E. Calaveras Boulevard**

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**I. ROLL CALL (6:00 p.m.)**

**II. ADJOURN TO CLOSED SESSION**

**1. PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

(Pursuant to Government Code Section 54957)

Title: City Manager

**2. CONFERENCE WITH LABOR NEGOTIATOR**

(Pursuant to Government Code Section 54957.6)

Unrepresented Employee: City Manager

**III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present**

**IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**

**V. APPROVAL OF MINUTES: December 2, 2003**

**VI. SCHEDULE OF MEETINGS**

**VII. PRESENTATIONS**

**Commendations:**

- SAFE Graduate Recognitions, Classes 7 & 8
- Milpitas Vietnamese Lions Club, President Michael Pham, for sponsoring a free Thanksgiving dinner for seniors and their families

**Proclamations:**

- Bill Dale, Volunteer of the Year – Santa Clara County Emergency Managers Association
- Kevin Karp, Volunteer of the Year – Santa Clara County Emergency Managers Association

**VIII. CITIZENS FORUM**

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Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

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**IX. ANNOUNCEMENTS**

- X. APPROVAL OF AGENDA**
- XI. CONSENT CALENDAR (Items with Asterisks)**
- XII. PUBLIC HEARINGS**

- 1. Request for Flag Ceremony at Higuera Adobe: Boy Scouts of America Troop 101 Request Permission to Raise the American and Vietnamese Flags at the Higuera Adobe on January 10, 2004, 10:15 A.M. to 12:00 P.M. (Staff Contact: Tom Wilson, 586-3050)**
- 2. Approve a Certificate of Compliance to Legalize a Lot at 1139 Edsel Drive Per a Planned Unit Development Condition of Approval (APN: 088-03-058 And 088-03-065), Applicant: Vicente Songcayawon (Staff Contact: Troy Fujimoto, 586-3287)**
- 3. Approve a One-Time, Eighteen-Month Time Extension for the Edsel Court Planned Unit Development Located at 1129 and 1143 Edsel Drive and 1116 and 1124 Shirley Drive (APN: 088-03-057 to 059 and 064 to 066), Applicant: Vicente Songcayawon (Staff Contact: Kim Duncan, 586-3283)**

**XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**

- RA1. CALL TO ORDER BY THE MAYOR**
- RA2. ROLL CALL**
- RA3. APPROVAL OF MINUTES: December 2, 2003**
- RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)**
- RA5. PRESENTATION: 2003 Tax Allocation Bond Series: Recognition of City Council for Its Leadership.**
- RA6. Approve Budget Appropriation: Milpitas Library Project Mapping, Survey and Off-Site Utility Improvements (Project No. 8153) (Staff Contact: Greg Armendariz, 586-3220)**
- \*RA7. Authorize Purchase and Resale of Affordable Housing Unit at 351 Celebration Drive Within the Parc Metropolitan Residential Development (Staff Contact: Felix Reliford; 586-3071)**
- \*RA8. Approve Agreement for Lobbying Services with Emanuels Jones & Associates (Staff Contact: Blair King, 586-3060)**
- \*RA9. Accept Milpitas Redevelopment Agency Fiscal Year 2002-2003 Annual Report (Staff Contact: Emma Karlen, 586-3145)**
- RA10. AGENCY ADJOURNMENT**

**XIV. REPORTS OF OFFICERS AND BOARDS**

**City Council**

- \*4. Approve the Mayor's Appointment and Reappointments to the Senior Advisory Commission: Mayor Esteves**

- \*5. Approve Removal of Charles King from the Community Advisory Commission (CAC): Councilmember Polanski**

**Community Advisory Commission**

- \*6. Approve the 2004 Community Advisory Commission (CAC) Work Plan (Staff Contact: Tambri Heyden, 586-3280)**

**Library JPA**

- 7. Receive County Library Presentation and Approve Resolution Endorsing Library Ballot Measure: Vice Mayor Dixon (Staff Contact: Cindy Maxwell, 586-3282)**

**XV. UNFINISHED BUSINESS (None)**

**XVI. NEW BUSINESS**

- 8. Authorize the Sale of Surplus Apparatus to Spring Valley Volunteer Fire Department (Staff Contact: Bill Weisgerber, 586-2811)**
- 9. Approve the Proposed VTA Code Design Concepts for the I-880/Milpitas Light Rail Station (Staff Contact: Staci Pereira, 586-3278)**
- \*10. Request for Fee Waiver: Knights of Columbus Council 8747 (Staff Contact: Bonnie Greiner, 586-3227)**
- \*11. Accept Wal-Mart "Safe Neighborhood Heroes" Public Safety Grant (Staff Contact: Bill Weisgerber, 586-2811)**

**XVII. ORDINANCE**

- 12. Introduce Ordinance No. 22.3 Amending Chapter 1, Title V of the Milpitas Municipal Code Updating the City's Disaster Corp Council and Adding Citizen Corp Duties (Staff Contact: Americo V. Silvi, 586-2810)**

**XVIII. RESOLUTIONS**

- \*13. Adopt Resolution Extending and Approving Emergency Water Supply for Spring Valley Heights Subdivision (Staff Contact: Darryl Wong, 586-3345)**
- \*14. Adopt Resolution Declaring Weeds on Certain Properties to be a Public Nuisance and Setting a Public Hearing for January 20, 2004, to Hear Objections (Staff Contact: Patti Joki, 586-3370)**
- \*15. Adopt Resolution Granting Final Acceptance: California Circle Channel Lining East Side of I-880, South of Dixon Landing Road (Project Nos. 4170 and 4047) (Staff Contact: Doug De Vries, 586-3313)**
- \*16. Adopt Resolution Summarily Vacating a Portion of Unnecessary Storm Drainage Easement Along Highway I-880, South of Dixon Landing Lagoon (Project No. 4047) (Staff Contact: Mehdi Khaila, 586-3328)**

**XIX. BIDS AND CONTRACTS**

- \*17. Approve an Agreement with Buildfolio, Inc. for the Purchase of Hardware, Software License, and Implementation Services for an Amount Not-to-Exceed \$30,000 through June 30, 2005 (Project No. 8109) (Staff Contact: Terry Medina, 586-2703)**
- \*18. Approve Contract Renewal for Employee Assistance Program Services with Managed Health Network, Inc. (Staff Contact: Cherie Rosenquist, 586-3082)**
- \*19. Approve Contract Change Order and Purchase Order: Manor Pump Station Improvements (Project Nos. 3385 and 3396) (Staff Contact: Mehdi Khaila, 586-3328)**
- \*20. Approve Agreement Amendment: Environmental Studies Consultation for New Library (Project No. 3394) (Staff Contact: Greg Armendariz, 586-3220)**
- \*21. Approve Plans and Specifications and Consultant Services Agreements: Berryessa Creek Trail, Reach 3 (Project No. 5074) (Staff Contact: Mike McNeely, 586-3301)**
- \*22. Approve Purchase and Sale Agreement of Real Property: Muriel M. Harris and Joseph A. McCarthy, Parcels affecting the Right of Way for Dixon/I-880 Interchange Project (Project No. 4047) (Staff Contact: Doug De Vries, 586-3313)**
- \*23. Award Construction Contract and Approve Budget Change: Selwyn Park Improvements (Project No. 5078) (Staff Contact: Mark Rogge, 586-3257)**
- \*24. Approve Agreement: Olivia Chen Consultants: Storm Water Pump Station Improvements (Project No. 8140) (Staff Contact: Doug De Vries, 586-3313)**

**XX. CLAIMS AND DEMANDS**

- \*25. Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Lou Zenzen, 586-3161)**

**XXI. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, JANUARY 6, 2004, AT 7:00 P.M.**

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**Milpitas City Council Meeting**  
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**XII. PUBLIC HEARINGS**

- 1. REQUEST FOR FLAG CEREMONY AT HIGUERA ADOBE: BOY SCOUTS OF AMERICA TROOP 101 REQUEST PERMISSION TO RAISE THE AMERICAN AND VIETNAMESE FLAGS AT THE HIGUERA ADOBE ON JANUARY 10, 2004, 10:15 A.M. TO 12:00 P.M. (STAFF CONTACT: TOM WILSON, 586-3050)**

**BACKGROUND:** As part of the celebration for the Vietnamese New Year, Boy Scout Troop 101 requests permission to acknowledge the New Year with a Flag Raising Ceremony at the Higuera Adobe. This includes raising both the American and Vietnamese flags on January 10, 2004, from 10:15 a.m. to 12:00 p.m.

**RECOMMENDATION:** Consider request.

- 2. APPROVE A CERTIFICATE OF COMPLIANCE TO LEGALIZE A LOT AT 1139 EDELS DRIVE PER A PLANNED UNIT DEVELOPMENT CONDITION OF APPROVAL (APN: 088-03-058 AND 088-03-065), APPLICANT: VICENTE SONGCAYAWON (STAFF CONTACT: TROY FUJIMOTO, 586-3287)**

**BACKGROUND:** The applicant is applying for a Certificate of Compliance for a vacant parcel at 1139 Edsel Drive within a Planned Unit Development (PUD). In December 2002, the City Council approved the PUD for six new apartment buildings on the parcel. The project site was originally part of four neighboring parcels. At the time of the original approval of the four parcels, the project site was to be used as open space for the larger subdivision.

As part of the staff review for the December 2002 approval, it was determined that the parcel was not a legal lot of record. The parcel was created as part of an illegal subdivision. Thus, a condition of approval of the PUD required either a parcel map or a Certificate of Compliance be obtained and recorded with the County of Santa Clara. The applicant has decided to pursue the Certificate of Compliance.

**RECOMMENDATION:** Approve the Certificate of Compliance (P-CC2003-8) for APN parcels 088-03-058 and 088-03-065, to make it a legal lot of record, based on the findings and special conditions contained in the Council's agenda packet, dated December 16, 2003.

- 3. APPROVE A ONE-TIME, EIGHTEEN-MONTH TIME EXTENSION FOR THE EDELS COURT PLANNED UNIT DEVELOPMENT LOCATED AT 1129 AND 1143 EDELS DRIVE AND 1116 AND 1124 SHIRLEY DRIVE (APN: 088-03-057 TO 059 AND 064 TO 066), APPLICANT: VICENTE SONGCAYAWON (STAFF CONTACT: KIM DUNCAN, 586-3283)**

**BACKGROUND:** At its December 10, 2003, meeting, the Planning Commission recommended the City Council approve a one-time, eighteen-month time extension (P-TE2003-7) for the Edsel Court Planned Unit Development (PUD). This PUD is for the development of two (2), approximately 2,400 square foot, tri-plex apartment buildings to replace an open blighted area in conjunction with the renovation of four existing apartment buildings. The original PUD approval was granted on December 17, 2002 and is scheduled to expire December 17, 2003.

The applicant submitted plans for initial building permit review on April 24, 2003 and has been working with city departments to meet requirements for building permits. At the time of the extension request, the applicant submitted a letter to the City stating that he was waiting final approval of the Certificate of Compliance and Easement Dedication (submitted to the city November 7, 2003), as well as the signing and execution of a Housing Affordability Agreement (submitted to the City November 20, 2003). The applicant is requesting additional time to complete recordation and easement dedications, effectively exercising, or vesting, the Planned Unit Development approval. With approval of the requested time extension, the new and final expiration date for the Edsel Court Planned Unit Development would be June 17, 2005.

**RECOMMENDATION:** Approve the request for an 18-month time extension (P-TE2003-7) (to expire on June 17, 2005) for Planned Unit Development No. P-PD2002-1 ("Edsel Court") based on the findings and special conditions included in the Council's agenda packet.

### **XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**

#### **RA1. CALL TO ORDER BY THE MAYOR**

#### **RA2. ROLL CALL**

#### **RA3. APPROVAL OF MINUTES: December 2, 2003**

#### **RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)**

#### **RA5. PRESENTATION: 2003 TAX ALLOCATION BOND SERIES: RECOGNITION OF CITY COUNCIL FOR ITS LEADERSHIP**

#### **RA6. APPROVE BUDGET APPROPRIATION: MILPITAS LIBRARY PROJECT MAPPING, SURVEY AND OFF-SITE UTILITY IMPROVEMENTS (PROJECT NO. 8153) (STAFF CONTACT: GREG ARMENDARIZ, 586-3220)**

**BACKGROUND:** On November 18, 2003, the City Council adopted a resolution establishing North Main Street, Weller Lane, and Winsor Street Underground Utility District No. 5. Establishment of this underground district is the first step required by the utility companies (PG&E, SBC, and Comcast) in order to begin the effort to underground their respective utilities. This work is planned to be completed, in advance of the Main Street Streetscape and new Library construction.

As previously recommended, this work would proceed under PG&E Rule 20B, whereby the applicant (City) pays for all of the design and construction costs. The next step is for Council to appropriate the funding for the design and construction of the undergrounding work. The total cost estimate is \$1,500,000, and includes design, construction, administration and an appropriate contingency, for the undergrounding effort.

Staff recommends a budget appropriation of \$1,500,000, to Capital Improvement Project No. 8153 – Milpitas Library Mapping, Survey, and Off-Site Utility Improvements. Sufficient funds are available in the 2003 RDA Bond Proceeds. Additional background information will be provided in an oral staff report at the Council meeting.

**RECOMMENDATION:** Approve a budget appropriation of \$1,500,000 from the 2003 RDA Bond Proceeds to Milpitas Library Mapping, Survey, and Off-Site Utility Improvements (Project No. 8153).

**\*RA7. AUTHORIZE PURCHASE AND RESALE OF AFFORDABLE HOUSING UNIT AT 351 CELEBRATION DRIVE WITHIN THE PARC METROPOLITAN RESIDENTIAL DEVELOPMENT (STAFF CONTACT: FELIX RELIFORD; 586-3071)**

**BACKGROUND:** On September 18, 2003, staff received a letter from the property owner of the townhome unit at 351 Celebration Drive in the Parc Metropolitan residential development. The owner has owned the unit since June 2002. The below market rate unit is 1,012 sq. ft. and the selling price is approximately \$270,000 for a low-income household.

Based on the City's Property Value Restrictions, Resale Agreement, and Option to Purchase contract agreement with the property owner, the City has 90 days to find a potential buyer and complete escrow or the property owner can sell the unit at fair market rate. The 90 days will expire on December 18, 2003. Staff has worked with the lender and tile company and has prepared the necessary paperwork to expedite the sale of the unit to the City on December 17, 2003, after the December 16, 2003, City Council approval.

Over the past month, the City has been working with the lender, Builders Mortgage Company, to find a potential buyer for the unit without any success. Staff waited as long as possible to bring this request to Council, trying to work with three potential buyers in order to prevent the Redevelopment Agency from having to purchase the unit. If the December 18th deadline is not met, the unit would be allowed to be sold at market rate and the City would lose one affordable housing unit from its inventory. Staff is requesting authorization to allow the Redevelopment Agency to purchase the unit and resell the unit at the below market rate cost (\$270,000) in the near future. Appropriate funds are available in the Redevelopment Agency's 20% Set-Aside Housing Funds to purchase the unit. Once the unit is resold, the funds will be returned to the Redevelopment Agency.

The lender has recommended that the City consider revising future regulatory agreements to amend the 90 day time period. The 90-day time period starts upon staff's receipt of the letter from the property owner to sell the unit. The lender feels that the 90 days should not begin until the lender has conducted the necessary background checks. Then, a 30-60-90 day escrow time period is reasonable. Given the amount of time required to advertise the unit (minimum 30 days), review the applications for completeness, conduct the lottery, send the applications to the lender in Southern California, and have the lender conduct credit and employment background checks on potential buyers, it is unrealistic to complete these steps in this limited time period. Staff will be working with the City Attorney's Office to address this matter and minimize future Redevelopment Agency purchases of unsold units.

Included in the Council/Agency's agenda packet is the letter from Miss Vidal requesting to sell the unit and the City's contract agreement.

**RECOMMENDATION:** Authorize Redevelopment Agency purchase of the below market rate unit at 351 Celebration Drive in an amount not to exceed \$270,000, and direct staff to continue to find an eligible low-income household to purchase the unit.



**\*RA8. APPROVE AGREEMENT FOR LOBBYING SERVICES WITH EMANUELS JONES & ASSOCIATES (STAFF CONTACT: BLAIR KING, 586-3060)**

**BACKGROUND:** On January 21, 2003, the Redevelopment Agency authorized the Executive Director to enter into a 12-month agreement with the firm of Emanuels Jones & Associates for lobbying services. The agreement expires January 31, 2004. Emanuels Jones & Associates has proven to be a valuable asset. The firm provides information on pending State actions. They have met with legislators to secure support for the Agency's Eighth Amendment to its Redevelopment Plan and support for the 2003 Tax Allocation Bond. Due to continued uncertainty with regard to the State's fiscal condition, it is recommended that the services of Emanuel Jones be continued for an additional 12 months. The proposed fee of \$2,500 per month remains identical to that of the previous agreement.

**RECOMMENDATION:** Authorize the Executive Director to enter into an Agreement for Lobbying Services in an amount not-to-exceed \$2,500 per month for 12 months.

**\*RA9. ACCEPT MILPITAS REDEVELOPMENT AGENCY FISCAL YEAR 2002-2003 ANNUAL REPORT (STAFF CONTACT: EMMA KARLEN, 586-3145)**

**BACKGROUND:** Pursuant to the reporting requirements of the Community Redevelopment Law and the Agency's bylaws, the agency must prepare a report annually to its legislative body within six months of its fiscal year end. Staff has prepared the Fiscal Year 2002-2003 Annual Report to provide the board members of the Agency with an overview of the redevelopment activities and accomplishments for the two project areas. An independent financial audit report was previously accepted by the Agency's Board on November 18, 2003.

**RECOMMENDATION:** Note receipt and file the Milpitas Redevelopment Agency's Fiscal Year 2002-2003 Annual Report.

**RA10. AGENCY ADJOURNMENT**

**XIV. REPORTS OF OFFICERS AND BOARDS**

**CITY COUNCIL**

**\*4. APPROVE THE MAYOR'S APPOINTMENT AND REAPPOINTMENTS TO THE SENIOR ADVISORY COMMISSION: MAYOR ESTEVES**

**BACKGROUND:** Mayor Esteves is recommending the appointment of Amanda Santos to a regular member position on the Senior Advisory Commission to fill the vacancy created by Frances Woodworth. Ms. Santos would move from the Alternate No. 1 position to the regular position, with a term expiring December 2004. The Mayor is also recommending the reappointments of Denny Weisgerber, Joanne Wood, and Albert Wang to terms expiring December 2005. In addition, the Mayor is recommending moving Joyce Dovlet from Alternate No. 2 to Alternate No. 1, with a term expiring December 2004.

Copies of all current applications for the Senior Advisory Commission are included in the Council's agenda packet.

**RECOMMENDATION:** Approve the Mayor's appointment and re-appointments to the Senior Advisory Commission.



**\*5. APPROVE REMOVAL OF CHARLES KING FROM THE COMMUNITY ADVISORY COMMISSION (CAC): COUNCILMEMBER POLANSKI**

**BACKGROUND:** Councilmember Polanski, the Council liaison to the Community Advisory Commission, has placed this item on the agenda for the Council to review the attendance of Charles King, Alternate No. 1 on the Commission. During 2003, Mr. King attended only three of eleven CAC meetings, missing eight meetings. Mr. King had previously indicated that his inability to attend CAC meetings was due to his job; however, when contacted last summer (July) about his attendance, he responded that his job duties had changed and he would be able to attend the meetings. Since that contact, he has attended only one meeting.

The CAC bylaws state that a member may be removed by a majority of the City Council at a regular City Council meeting.

**RECOMMENDATION:** Approve the removal of Charles King from the Alternate No. 1 position on the Community Advisory Commission.

**Community Advisory Commission**

**\*6. APPROVE THE 2004 COMMUNITY ADVISORY COMMISSION (CAC) WORK PLAN (STAFF CONTACT: TAMBRI HEYDEN, 586-3280)**

**BACKGROUND:** At the end of every calendar year the Community Advisory Commission (CAC) prepares an annual work plan for City Council consideration and approval. At their December 3, 2003 meeting, the CAC prepared and unanimously approved the work plan included in the Council's agenda packet. Many of the goals/projects are carried over from the 2003 work plan as they are underway. The following new additions and changes have been added:

**Annual recurring tasks**

- Heritage tree nominations - new
- Tree City USA designation - new
- Holiday Social and Tree Trimming - separated events

**Short-term Goals/Projects**

- Tree Planting - added tree planting outreach and tree protection awareness
- Mayoral Term Lengths - added considering term limits
- Neighborhood Preservation - The street sweeping project was added to this new project
- Neighborhood Night-Out - Evaluate whether to continue hosting
- Town Hall Meeting - Evaluate whether to continue and change format

**Long-term Goals/Projects**

- Youth Involvement In Government - new

**RECOMMENDATION:** Approve the CAC's proposed 2004 work plan.

**Library JPA**

**7. RECEIVE COUNTY LIBRARY PRESENTATION AND APPROVE RESOLUTION ENDORSING LIBRARY BALLOT MEASURE: VICE MAYOR DIXON (STAFF CONTACT: CINDY MAXWELL, 586-3282)**

**BACKGROUND:** The Santa Clara County Library District provides Library services for the City of Milpitas, eight other cities, and the unincorporated areas of Santa Clara County. A Joint Powers Authority (JPA) Board governs the District, and Milpitas is represented on the Board by Vice Mayor Dixon.

The District is funded from a variety of revenue sources including a parcel tax that will expire in July 2005. Since the parcel tax is a significant source of the District's annual funding -- about 21% -- the JPA placed a measure on the March 2004 ballot that will extend the life, and slightly increase the amount, of the current parcel tax. County library staff will provide a presentation at the meeting regarding the proposed ballot measures. Included in the Council's agenda packet is a draft resolution endorsing the proposed ballot measure.

**RECOMMENDATION:** Consider presentation by County library staff and approve resolution endorsing Library ballot measure for March 2, 2004, election.

**XV. UNFINISHED BUSINESS (None)**

**XVI. NEW BUSINESS**

**8. AUTHORIZE THE SALE OF SURPLUS APPARATUS TO SPRING VALLEY VOLUNTEER FIRE DEPARTMENT (STAFF CONTACT: BILL WEISGERBER, 586-2811)**

**BACKGROUND:** On previous occasions (most recently 1995), the City Council has approved the sale of surplus apparatus and equipment to the Spring Valley Volunteer Fire Department for \$1.00. The Milpitas Fire Department has surplus apparatus, which will be of use and benefit to Spring Valley. Included in the Council's agenda packet is a memo from the Fire Chief with a brief description of the Spring Valley Volunteer Fire Department, and of the surplus apparatus.

**RECOMMENDATION:** Authorize the sale of said surplus apparatus to Spring Valley Volunteer Fire Department for \$1.00.

**9. APPROVE THE PROPOSED VTA CODE DESIGN CONCEPTS FOR THE I-880/MILPITAS LIGHT RAIL STATION (STAFF CONTACT: STACI PEREIRA, 586-3278)**

**BACKGROUND:** The Valley Transportation Authority's (VTA) Community Oriented Design Enhancements (CODE) program provides funds for art and design improvements for light rail transit (LRT) and highway projects funded under Measure B. Earlier this year, the City Council and the Arts Commission reviewed four project designs for the Great Mall, I-880, and Montague LRT stations. Sculptural design concepts for the I-880/Milpitas LRT station are the final enhancements included in the CODE program for Milpitas. The artist selected to design the concepts for this station, Ellen Sollod, is proposing two art pieces; the "Camera Obscura" and the "Cabinet of Invention and Obsolescence".

The "Camera Obscura" is an interactive art piece that allows the user to utilize the natural and prolific sunlight to observe his/her surroundings in an inverted and somewhat blurred manner. The "Cabinet of Invention and Obsolescence" is a sculpture that utilizes the sun to illuminate objects inside a stack of bronze boxes. Holes in the top of the boxes capture the movement of the sun and cast different angles of light upon the archaic and obsolete inventions that reside within the boxes. Further details on the two concepts are included in the Council's agenda packet.

The Arts Commission reviewed the design concepts at its November 24, 2003 meeting and are recommending approval of these two designs to the City Council, subject to the following two modifications:

1. Install a placard near the "Cabinet of Invention and Obsolescence" that includes an explanatory key to the objects within the boxes; and

2. Of the three concepts for the "Camera Obscura," the design of the third camera (bottom right of plans in the Council's agenda packet) is preferred. However, consider safety concerns associated with a rotating metal object design.

Upon approval of the conceptual design, the artist will progress to develop the final design. Staff will review the artist's progress to ensure the final design is consistent with the approved conceptual design. If the Council does not approve the conceptual design, the artist will be instructed to start over and develop a more appropriate concept, which could require additional funds from the VTA CODE Program.

**RECOMMENDATION:** Approve the proposed VTA CODE design concepts for the I-880/Milpitas LRT station subject to modifications recommended by the Arts Commission.

**\*10. REQUEST FOR FEE WAIVER: KNIGHTS OF COLUMBUS COUNCIL 8747 (STAFF CONTACT: BONNIE GREINER, 586-3227)**

**BACKGROUND:** The Knights of Columbus Milpitas Council 8747 is putting on its annual Free Throw contest for the youth in the community on January 24, 2004, from 2:00 p.m. to 4:00 p.m. in the Milpitas Sports Center facility. The Knights furnish the awards, plaques, ribbons, patches, and certificates. As a non-profit organization, the Knights are requesting help in waiving the fees for using the Milpitas Sports Center for this event. The 2003 fees to use the Milpitas Sports Center facility for 2 hours are as follows:

• Refundable Deposit	\$150
• Application	15
• Attendant	30
• Custodian	75
• Rental	<u>60</u>
<b>TOTAL:</b>	<b><u>\$330</u></b>

**RECOMMENDATION:** Approve the waiver of the Deposit, Application fee, and Rental fee (\$225).

**\*11. ACCEPT WAL-MART "SAFE NEIGHBORHOOD HEROES" PUBLIC SAFETY GRANT (STAFF CONTACT: BILL WEISGERBER, 586-2811)**

**BACKGROUND:** Wal-Mart has given a local Public Safety Grant, in the amount of \$1,500 to the Milpitas Fire Department as part of its corporate community service program, "Hometown Heroes." The department is in receipt of the check, with the funds intended to be utilized for Public Fire and Disaster Preparedness Education instructional materials, benefiting the community at large.

**RECOMMENDATION:** Authorize Fire Department acceptance of the Wal-Mart "Hometown Heroes" Grant, in the amount of \$1,500, to be utilized for Public Fire and Disaster Preparedness Education instructional materials, and appropriate \$1,500 to Fire Department Operating Budget.

## **XVII. ORDINANCE**

### **12. INTRODUCE ORDINANCE NO. 22.3 AMENDING CHAPTER 1, TITLE V OF THE MILPITAS MUNICIPAL CODE UPDATING THE CITY'S DISASTER CORP COUNCIL AND ADDING CITIZEN CORP DUTIES (STAFF CONTACT: AMERICO V. SILVI, 586-2810)**

**BACKGROUND:** The current Municipal Code chapter regarding the City's Emergency Organization and Functions is derived from language suggested by the State in the early 1970's. Since that time, Emergency Management has undergone significant changes based on various disasters that have occurred in the State. Manmade disasters, such as the September 11<sup>th</sup> terrorist attacks, have further altered the way that local government must respond in times of emergency and, as a result of 9/11, the Federal government has asked that local communities form Citizen Corp Councils to more effectively provide guidance to the City's emergency response organization. Adding this language to the Municipal Code will also ensure future funding for local volunteer programs such as SAFE, Neighborhood Watch, Medical Reserve Corps (MRC), and Volunteers in Police Services (VIP's).

**RECOMMENDATION:**

1. Waive reading beyond the title.
2. Introduce Ordinance No. 22.3.

## **XVIII. RESOLUTIONS**

### **\*13. ADOPT RESOLUTION EXTENDING AND APPROVING EMERGENCY WATER SUPPLY FOR SPRING VALLEY HEIGHTS SUBDIVISION (STAFF CONTACT: DARRYL WONG, 586-3345)**

**BACKGROUND:** On January 21, 2003, Council approved Resolution No. 7270 to provide emergency water to Spring Valley Heights Mutual Water Company (SPVH-MWC) until December 31, 2003, due to a well failure. Under provisions of Ordinance No. 38.742, emergency water can be provided to meet health and safety needs of the community. SPVH-MWC has now submitted a request for an extension of the emergency water supply beyond December 31, 2003, due to continued water shortage resulting from failure of the existing and new wells. SPVH-MWC is proceeding with the planning for a permanent connection to the City water system.

According to Ordinance No. 38.742, the following four criteria must be met before Council may approve a temporary emergency water supply.

- An urgent public health or safety concern exists.
- An independent certified professional engineer determines that City supply is the only economically justifiable solution to the health and safety concern.
- The subdivision map for the sites in question had been recorded on or before November 3, 1998.
- The applicant is responsible for the cost to provide service.

Staff has determined that all the above criteria continue to apply to SPVH-MWC. Staff has also determined that the emergency water supply will not affect the ability of the Milpitas distribution system to meet customer demand. Staff, therefore, recommends that the Council adopt the resolution extending emergency water supply for SPVH-MWC until a permanent connection with the City water system is installed, or December 31, 2005, whichever occurs sooner.

**RECOMMENDATION:** Adopt resolution extending and approving emergency water supply for Spring Valley Heights.

- \*14. ADOPT RESOLUTION DECLARING WEEDS ON CERTAIN PROPERTIES TO BE A PUBLIC NUISANCE AND SETTING A PUBLIC HEARING FOR JANUARY 20, 2004, TO HEAR OBJECTIONS (STAFF CONTACT: PATTI JOKI, 586-3370)**

**BACKGROUND:** The County Fire Marshal's office has notified the City that the County is commencing its Weed Abatement Program for the forthcoming season and has requested a resolution declaring weeds to be a public nuisance and scheduling a public hearing to hear objections to the proposed destruction or removal of weeds. A resolution of this nature is adopted by the Council each year declaring weeds on specific properties to be a public nuisance and giving property owners an opportunity to appear before the Council. The public hearing will be scheduled for January 20, 2004.

**RECOMMENDATION:** Adopt resolution declaring weeds on specific properties to be a public nuisance and scheduling a public hearing for January 20, 2004.

- \*15. ADOPT RESOLUTION GRANTING FINAL ACCEPTANCE: CALIFORNIA CIRCLE CHANNEL LINING EAST SIDE OF I-880, SOUTH OF DIXON LANDING ROAD (PROJECT NOS. 4170 AND 4047) (STAFF CONTACT: DOUG DE VRIES, 586-3313)**

**BACKGROUND:** This project, which was initially accepted on August 6, 2002, has passed the one year warranty period. A final inspection has been made and the public improvements, which include grading and construction of channel lining, are satisfactory. Therefore, a final acceptance may be granted and the contractor's bond may be released.

**RECOMMENDATION:** Adopt resolution granting final acceptance and release of the bond.

- \*16. ADOPT RESOLUTION SUMMARILY VACATING A PORTION OF UNNECESSARY STORM DRAINAGE EASEMENT ALONG HIGHWAY I-880, SOUTH OF DIXON LANDING LAGOON (PROJECT NO. 4047) (STAFF CONTACT: MEHDI KHAULA, 586-3328)**

**BACKGROUND:** The widening of I-880 as part of the Dixon Landing/I-880 interchange project requires the abandonment of a portion of the City storm drainage easement along the eastern side of the freeway south of Dixon Landing Lagoon. In anticipation of the roadway widening, the existing drainage ditch has been improved and relocated. Therefore, this portion of the storm drainage easement is no longer necessary and can be summarily vacated in accordance with the State Street and Highway Code. Utility companies were notified and no objection was received to the proposed vacation.

**RECOMMENDATION:** Adopt Resolution summarily vacating a public easement for storm drainage purposes.

## **XIX. BIDS AND CONTRACTS**

- \*17. APPROVE AN AGREEMENT WITH BUILDFOLIO, INC. FOR THE PURCHASE OF HARDWARE, SOFTWARE LICENSE, AND IMPLEMENTATION SERVICES FOR AN AMOUNT NOT-TO-EXCEED \$30,000 THROUGH JUNE 30, 2005 (PROJECT NO. 8109) (STAFF CONTACT: TERRY MEDINA, 586-2703)**

**BACKGROUND:** The City of Milpitas currently utilizes a combination of manual processes and data entry for gathering information related to the inspection of properties by Fire Prevention personnel. This process requires managing the scheduling of appointments, the assignment of Fire Personnel, conducting field inspections, and the data entry of information into the Fire Prevention System. Unfortunately, the current process requires Fire Personnel to manually capture the information related to the inspection and subsequently enter the information into their

computer system. Not only does this require double work pertaining to the transcription of the inspector's notes but it also allows for the entry of erroneous information that could be crucial in the event of the outbreak of a fire.

During the past 18 months, staff from the Information Services Department and the Fire Department have reviewed various software packages, the re-design of inspection documents, and changes to their manual procedures that could improve the efficiency of gathering inspection information. The outcome of that analysis has been to recommend the purchase of hardware and software provided by Buildfolio, Inc. that enables the field capture of inspection data. This information will be uploaded to the Fire Prevention server after returning to the office. This process will not only increase the number of inspections that can occur annually but it will eliminate the possibility of data entry errors. Staff believes that this hardware and software will provide the City of Milpitas, its residents, businesses, and staff with an integrated set of hardware, software, and manual procedures that will eliminate the redundant entry of information, minimize the level of errors that are currently being experienced, and provide the opportunity to better serve the citizens of Milpitas.

Funding for the purchase of handheld inspection hardware, software license and implementation services are available in Capital Improvement Program No. 8109. The cost for the handheld inspection hardware, software license, and implementation services will not exceed \$30,000.

Approval of this agreement with Buildfolio, Inc. will provide the City of Milpitas with an integrated hardware and software solution and implementation services that will replace the current obsolete systems for Fire Prevention inspections.

**RECOMMENDATION:** Authorize the City Manager to approve the purchase of hardware, software license agreement, and implementation services between Buildfolio, Inc. and the City of Milpitas, subject to approval as to form by the City Attorney.

**\*18. APPROVE CONTRACT RENEWAL FOR EMPLOYEE ASSISTANCE PROGRAM SERVICES WITH MANAGED HEALTH NETWORK, INC. (STAFF CONTACT: CHERIE ROSENQUIST, 586-3082)**

**BACKGROUND:** Managed Health Network, Inc. (MHN) provides employee assistance services for the City's employees. Staff recommends renewal of the MHN contract for 2004, which includes a 4% increase.

**RECOMMENDATION:** Authorize staff to enter into a contract for an employee assistance program with Managed Health Network (MHN) for the period January 1 through December 31, 2004, in an amount not-to-exceed \$32,255.28.

**\*19. APPROVE CONTRACT CHANGE ORDER AND PURCHASE ORDER: MANOR PUMP STATION IMPROVEMENTS (PROJECT NOS. 3385 AND 3396) (STAFF CONTACT: MEHDI KHAILA, 586-3328)**

**BACKGROUND:** This project was awarded for construction by the City Council on April 15, 2003. The project provides improvements to increase the pump station capacity and permanent standby power. All improvements have been completed, which include replacing propellers in the existing two pumps, adding a third pump and a backup generator. With the generator constructed on an elevated concrete pad to meet floodplain regulations, additional work is necessary to screen the generator from public view with fencing and landscaping. Other work is also necessary to make the generator and its components more accessible for operation, maintenance, and to vandal-proof the facility.



Staff has negotiated with the project contractor, D. W. Nicholson, for an amount of \$8,591.68 for all the necessary modification work. Staff also received a bid proposal from A-1 Fencing to construct a screening fence for an amount of \$7,500. The landscaping will be done by City forces. There are sufficient funds in the projects to fund the additional improvements.

**RECOMMENDATION:** Authorize the City Engineer to execute a change order in the amount of \$8,591.68 to D. W. Nicholson, and a purchase order in the amount of \$7,500 to A-1 Fencing.

**\*20. APPROVE AGREEMENT AMENDMENT: ENVIRONMENTAL STUDIES  
CONSULTATION FOR NEW LIBRARY (PROJECT NO. 3394) (STAFF CONTACT:  
GREG ARMENDARIZ, 586-3220)**

**BACKGROUND:** On May 11, 1999, the City Council approved an agreement with Robert Bein, William Frost & Associates (RBF Consulting) to provide environmental studies and reports for City projects. On August 5, 2003, the City Council authorized an amendment to add environmental consulting for several new capital improvement projects, including the new library. Work is now underway to assess the environmental effects of the new library. Additional analysis of the project's potential effects on cultural resources and air quality is needed as well as (Phase I.) toxic contaminants review, in order to support findings required under the California Environmental Quality Act. The proposed fee for the additional services is a not-to-exceed amount of \$15,000, which is considered reasonable for the scope of work. There are sufficient funds in the project budget to cover this cost.

Preliminary work, already completed, indicates that additional testing will be required prior to acquisition of property needed for the library project. This testing will lead to Phase II. evaluation to qualify and quantify what future site remediation would be necessary.

**RECOMMENDATION:** Authorize the City Manager to execute Amendment No. 9, with a not-to-exceed amount of \$15,000, to the agreement for environmental studies services with Robert Bein, William Frost & Associates, subject to approval as to form by the City Attorney.

**\*21. APPROVE PLANS AND SPECIFICATIONS AND CONSULTANT SERVICES  
AGREEMENTS: BERRYESSA CREEK TRAIL, REACH 3 (PROJECT NO. 5074)  
(STAFF CONTACT: MIKE MCNEELY, 586-3301)**

**BACKGROUND:** Plans and specifications for the subject project have been completed in accordance with the approved Capital Improvement Program (CIP). The improvements consist of installing trail surfacing along Berryessa Creek from Abel Street to Hillview Drive, a pedestrian/bicycle bridge that spans the creek at Gill Park, and related trail amenities. The trail improvements have been selected for compatibility with the Santa Clara Valley Water District's plan to implement flood protection improvements along Berryessa Creek.

The engineer's estimate for the work is approximately \$500,000, and funds are available in the project budget. A copy of the project plan title sheet is included in the Council's agenda packet. Complete plans and specifications are available for review in the office of the City Engineer.

The firm of Winzler and Kelly consulting engineers was retained to provide design services for Berryessa Creek Trail, Reach 3. Now that design work is complete, it is appropriate to amend the contract to include bid phase and construction phase support by the consultant. The negotiated fee for such services is not-to-exceed \$39,000, which is considered reasonable for the anticipated services. There are sufficient funds in the project budget to cover this expense.

Construction of the project is partly funded by a \$375,000 federal grant. Federal grants necessitate compliance with a various requirements that are specific to federal projects. Specialized expertise is needed for proper administration of these requirements. The firm of 4 Leaf, Inc. is qualified to provide such services. Staff recommends that a contract be executed for



a not-to-exceed fee of \$29,900 for administration of federal aid requirements for Berryessa Creek Trail, Reach 3. This fee is considered reasonable for the anticipated services. There are sufficient funds in the project budget to cover this expense.

**RECOMMENDATION:**

1. Approve plans and specifications for Berryessa Creek Trail, Reach 3 (Project No. 5074) and authorize advertising for construction bid proposals.
2. Authorize the City Manager to execute an agreement amendment with Winzler and Kelly in an amount not-to-exceed \$39,000, subject to approval as to form by the City Attorney.
3. Authorize the City Manager to execute an agreement with 4 Leaf, Inc. in an amount not-to-exceed \$29,900, subject to approval as to form by the City Attorney.

**\*22. APPROVE PURCHASE AND SALE AGREEMENT OF REAL PROPERTY: MURIEL M. HARRIS AND JOSEPH A. MCCARTHY, PARCELS AFFECTING THE RIGHT OF WAY FOR DIXON/I-880 INTERCHANGE PROJECT (PROJECT NO. 4047) (STAFF CONTACT: DOUG DEVRIES, 586-3313)**

**BACKGROUND:** On May 16, 2000, City Council approved a Resolution of Necessity, No. 6995, to acquire the necessary right of way and accommodate various utility relocations for the Dixon Landing/I-880 Interchange project. Since then, the City of Milpitas and City of Fremont have been negotiating with 13 Milpitas property owners. One of the thirteen properties is that of Joseph A. McCarthy and Muriel M. Harris (Seller). Therefore, an agreement with the Seller to purchase the property to be used for utility easements is proposed. The total purchase price is \$2,001,050. On September 5, 2000, City Council also approved an agreement between Milpitas and Fremont. Milpitas placed its share into an escrow account with the City of Fremont. Therefore, no additional funds are required from Milpitas' share to purchase this property.

**RECOMMENDATION:** Authorize the City Manager to enter into the agreement to purchase certain real property from Joseph A. McCarthy and Muriel M. Harris (Seller) in an amount of \$2,001,050, at no further cost to the City, subject to approval as to form by the City Attorney.

**\*23. AWARD CONSTRUCTION CONTRACT AND APPROVE BUDGET CHANGE: SELWYN PARK IMPROVEMENTS (PROJECT NO. 5078) (STAFF CONTACT: MARK ROGGE, 586-3257)**

**BACKGROUND:** On November 4, 2003, the City Council approved plans and specifications for Selwyn Park Improvements and authorized advertising the project for bids. The project improves a neighborhood park located on Selwyn Drive to meet current accessibility and playground standards. The work includes a new play structure and a swing set for toddlers, basketball practice area, pathway, site grading, drainage, landscaping, irrigation improvements, and site amenities. Amenities were chosen for safety, durability, conformance with current standards, reduction of long-term maintenance, and to allow for a range of neighborhood uses.

The project was advertised and sealed proposals were opened on December 5, 2003. Seven proposals were received that ranged from \$173,111 to \$208,888. The Engineer's estimate for the work was \$159,217. The low bidder was ESR Construction of San Jose, at 9% above the Engineer's estimate. There were several bids close to the lowest bid indicating that the low bid price is appropriate.

The current project budget is \$190,000, funded primarily with Community Development Block Grant funds (\$172,222), plus \$17,778 from the Park Fund. Staff recommends increasing the project budget by \$53,000 by authorizing a \$43,000 appropriation from the Park Fund and a \$10,000 transfer from Water System Air Relief Valve Modifications, Project 7086. The cost of upgrading an existing air and vacuum release valve within Selwyn park would come from this project.

This proposed level of funding will allow construction of the new park improvements, provide for an appropriate construction contingency and administrative and engineering support for the remainder of the project. Should there be any unused funds at the completion of the project, they will be returned to the Park Fund and to Project 7086 as appropriate.

**RECOMMENDATION:**

1. Award the construction contract for Selwyn Park Improvements, Project No. 5078 to ESR Construction in the amount of \$173,111.
2. Increase the project budget and approve a budget appropriation of \$53,000, with \$43,000 from the Park Fund and a transfer of \$10,000 from Project 7086, Water System Air Relief Valve Modifications.

**\*24. APPROVE AGREEMENT: OLIVIA CHEN CONSULTANTS: STORM WATER PUMP STATION IMPROVEMENTS (PROJECT NO. 8140) (STAFF CONTACT: DOUG DE VRIES, 586-3313)**

**BACKGROUND:** This project is included in the current five-year Capital Improvement Program (CIP). The project will refurbish the Oak Creek storm drainage pump station to improve its reliability and efficiency, and to ensure compliance with environmental regulations. The work at this facility is high priority due to its age and condition of the engines, and is planned for summer 2004 construction.

In accordance with the City's standard consultant selection procedure, Olivia Chen Consultants was selected to provide professional engineering consultation services required to design the improvements for this project. A scope of work is proposed and negotiated at a not-to-exceed amount of \$90,132 for the required design services. The fee is considered reasonable for the work involved, and there are sufficient funds in the project budget to cover the costs.

**RECOMMENDATION:** Authorize the City Manager to enter into the agreement with Olivia Chen Consultants, in the amount of \$90,132, subject to approval as to form by the City Attorney.

**XX. CLAIMS AND DEMANDS**

**\*25. APPROVE PAYMENT REQUESTS: MISCELLANEOUS VENDORS / CONTRACTORS (STAFF CONTACT: LOU ZENZEN, 586-3161)**

**BACKGROUND:** In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$6,500.00 to Shield's Consulting Group, Inc. for state mandated claims processing services for the Finance Department. Shield's Consulting Group submitted the lowest bid for these services. (Funds are available from the Finance Department operating budget for this service.)
2. \$11,257.89 to San Diego Police Equipment for the annual purchase of practice and service ammunition manufactured by Federal Cartridge Co. through a State of California contract for the Police Department. (Funds are available from the Police Department operating budget for this purchase.)
3. \$6,190.09 to Adamson Industries for the annual purchase of practice and service ammunition manufactured by Winchester Ammunition for the Police Department. (Funds are available from the Police Department operating budget for this purchase.)

**RECOMMENDATION:** Approve the purchase requests.

**XXI. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, JANUARY 6, 2004, AT 7:00 P.M.**